



NUCLEAR ENERGY INSTITUTE

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(59FR 24065)

OFFICE OF SECRETARY
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BRANCH

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
One White Flint North, MS/16 G15
11555 Rockville Pike
Rockville, MD 20852-2738

ATTENTION: Docketing and Services Branch

SUBJECT: Revision of Fee Schedules; 100 Percent Fee Recovery, FY1994
(59 Fed. Reg. 24065 - May 10, 1994)

Dear Mr. Chilk:

The Nuclear Energy Institute (NEI)¹ offers the following comments on behalf of the commercial nuclear energy industry regarding the proposed FY1994 NRC fee schedule. The burden that these fees impose upon all categories of NRC licensees has been well documented in the hundreds of letters that NRC has received since 100 percent cost recovery took effect in FY1991, and in the 33 percent decline in the number of materials licensees. We are encouraged by the Commission's recent recommendations to Congress for legislative changes to reduce the burden. There is more that the Commission can do, however. Absent legislation, the Commission has the ability now to make certain policy decisions that would allow more equitable cost recovery. Accordingly, our comments go beyond the proposed changes in the Federal Register notice to suggest additional changes to bring Commission policy more in line with Congressional guidance on fee allocation.

¹ NEI is the successor organization to the Nuclear Management and Resources Council (NUMARC) and the U.S. Council on Energy Awareness (USCEA). NUMARC was the organization of the nuclear industry responsible for coordinating the efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues and the regulatory aspects of generic operational and technical issues affecting the nuclear industry. USCEA members included fuel cycle facility and materials licensees. NEI's members include every utility licensed to operate a commercial nuclear power plant in the United States, the major nuclear steam supply system vendors, major architect/engineering firms, fuel fabrication facilities, materials licensees and other holders of NRC licenses, and other individuals and organizations involved in the nuclear energy industry.

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Proposed Changes to Part 170

Overall, the proposed changes to Part 170 are an improvement in that they better define the beneficiary of certain regulatory activities and they more equitably reallocate the fees for services provided. We support the proposed removal from overhead, and recovery from a specific class of licensee, of the costs for the programs specified on page 24066 of the Federal Register notice. We support the proposed fee for review of information submitted by Agreement State licensees under the reciprocity provisions of Section 150.20. We encourage continued effort to relate fees to services provided specific classes of licensees and to reduce the costs classified as overhead.

We also support the proposed change in the definition of special projects and we agree that costs are more appropriately recovered through annual charges on a class of licensees when the related activities are in support of generic efforts such as development of regulatory guidance applicable to a class of licensees.

Proposed Changes to Part 171

We support the proposed "administrative" changes to Part 171. We also support the proposal to assess DOE an annual charge to recover generic regulatory costs associated with the Uranium Mill Tailings Radiation Control Act. We agree with the statement (59 Fed. Reg. 24068) that these changes are "consistent with the Congressional guidance in the Conference Committee Report on OBRA-1990, which states that the 'conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class.' " We believe, however, that this guidance is not being followed in two areas where the Commission has made policy decisions that force one class of licensee unfairly to subsidize cost recovery for activities that clearly benefit all licensees (fees for educational institutions), or for activities that are unrelated to that class (subsidy of small entity fees).

Exemption from Fees for Educational Institutions

The Commission has made a policy decision to exempt reactors at educational institutions from annual charges, licensing and inspection fees, and to collect these fees as part of the annual charge paid by power reactor licensees. As a result, utility ratepayers have paid \$18.4 million of these costs in the past four fiscal years. This policy is inconsistent with the intent of Congress as expressed in the OBRA-1990 Conference Report, namely, "... increasing the amount of recovery to 100 percent of the NRC's budget authority will result in the imposition of fees upon certain licensees for costs that cannot be attributed to those licensees or classes of licensees. The Commission should assess the charges for

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these costs as broadly as practicable (emphasis added) in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible."

As NRC has noted (58 Fed. Reg. 21664), "educational research provides an important benefit to the nuclear industry and to the public at large ... A vibrant nuclear education sector also is important as a source of talent and ideas for the NRC itself and for the whole government." Since all NRC licensees reap the benefits from nuclear-related education, all should share in the subsidy of exempted educational institutions. We note that the Department of Energy now holds a general license for the Spook, Wyoming mill tailings site and is therefore subject to an annual charge under Part 171. Since NRC has acknowledged that nuclear-related education is in the national interest, it may be appropriate for the educational institution subsidy to be included in the annual charge assessed DOE.

We urge the Commission to reconsider the policy regarding allocation of these costs.

Subsidy of Small Entity Fees

The Commission has made a policy decision to cap the fees paid by small entities and to bill power reactor licensees for the shortfall in revenue (\$19.6 million to date). This is unfair and contrary to Congress' intent as expressed in the OBRA-1990 Conference Report. This policy is unfair because it forces utility ratepayers to subsidize the research and generic regulatory activities associated with commercial, for-profit use of nuclear gauges, radiopharmaceuticals, radiography, etc. The categories of NRC licensees that benefit from these generic activities are materials licensees, not power reactor licensees.

As directed by the Energy Policy Act, NRC reviewed its user fee policy and submitted a February 1994 report to Congress with recommendations to prevent placing an unfair economic burden on its licensees. We are encouraged by the recommendation for legislative changes to remove from the fee base those costs that are not collected from small entities. We recommend, however, that NRC consider actions it could take now without waiting for legislative changes - actions such as (1) reducing costs by elimination or deferral of lower priority research and generic rulemaking activity; (2) reducing the amount to be collected under Part 171 by increasing Part 170 licensing and inspection fees for the affected categories of licensees, (3) raising the lower tier small entity fee, (4) annual escalation, using the CPI or some equivalent index, of the small entity fee limits, which have stayed at \$400 and \$1,800 since they were set two years ago.

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Exemption from Fees for Agreement States Licensees

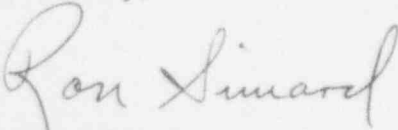
The financial impact of 100 percent cost recovery has been devastating on materials licensees. Annual fees for FY1994 are 13 to 17 percent higher compared to the FY1993 annual fees (58 Fed. Reg. 24076). Fees for some licensees have more than doubled since 100 percent cost recovery took effect in FY1991. And the number of materials licensees has decreased by about a third.

As a result, the increasing costs of the generic regulatory activities that apply to these categories of licensees are being spread over a diminishing number of companies. The problem is exacerbated by the fact that only the NRC licensees are liable for these costs. As NRC noted in the February 1994 report to Congress on the impact of its user fees, there are approximately 23,000 licensees who benefit from the NRC regulatory framework. However, only 6,500 of them are licensed by NRC; the majority of them are licensed by Agreement States. Since OBRA-1990 allows NRC to assess annual charges for generic regulatory activities only to its licensees, the costs of these activities (\$15 million in FY1993) are borne by only a quarter of the entities that benefit from them. Unless something changes, this inequity will steadily get worse as the number of NRC licensees gets smaller - for example, as more states become Agreement States, and licensees in those states drop out of the NRC fee base as a result.

We are encouraged by the recommendation in the February 1994 report to Congress for a legislative change that would allow these generic regulatory costs to be removed from the fee base.

We appreciate the opportunity to comment and would be glad to discuss our comments further with NRC staff.

Sincerely,



Ron Simard
Manager, Industry Coordination

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